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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,756	08/19/2003	Shigenobu Sato	P24072	3012
7055	7590	03/07/2006	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			STEWART, ALVIN J	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/642,756	SATO ET AL.	
	Examiner	Art Unit	
	Alvin J. Stewart	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments filed December 16, 2006 have been fully considered but they are not persuasive.

The Examiner maintains the rejection because the Examiner believes that compare to the Applicant's parameters and applicant's interpretation of what is entirely covering the upper and lower surfaces of the body, the Lin reference clearly reads on the Applicant's parameter of what is the entire upper and lower surfaces of the body. For example, Fig. 2B of the Applicant's invention shows an upper surface and a lower surface that is NOT entirely covered by linear claw portions. The proximal portion (9) and the distal portion of the implant do NOT have, at all, linear claw portions. Therefore, the Examiner maintains the rejection. Additionally, the Examiner made a 112, 1st paragraph rejection; believing that the Applicant's specification doesn't have enough support for having those limitations, see below.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 2, and 4-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new limitations entered in claim 1 have been treated as new matter because the Examiner was unable to find support in the specification neither in the drawings

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disclosing an upper and lower surfaces of the body covered entirely by the linear claw portions. Fig. 2B of the Applicant's invention discloses an implant having a proximal and distal portions without linear claw portions. Therefore, the claws are NOT entirely covering the upper and lower surfaces of the body.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin US Patent 6,080,158 in view of Lin US 6,325,827 B1.

Lin discloses an intervertebral implant (100) comprising a body defined by a pair of upper (120) and lower (130) surfaces and a pair of side surfaces (160) and a withdrawal preventer comprising a plurality of linear claw portions (121). Finally, the body has a distance between the upper and lower surfaces at the front side of the intervertebral spacer is greater than a distance between the upper and lower surfaces at the rear side of the intervertebral spacer (see Fig. 2). Finally, the width (height of the implant) in the middle portion of the body is wider than at the two ends.

However, Lin does not disclose claws having asymmetric triangular shape with surfaces having different angles.

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Lin ('827) teaches an implant comprising a plurality of asymmetrical claw portions having different angles for the purpose of facilitating the insertion of the implant and avoiding the expulsion of the implant when is already implanted (col. 5, lines 6-15).

It would have been obvious to one having ordinary skill in the art at the time the invention was to modify the claw portions of the Lin reference ('158) with the claw portions of the Lin reference ('827) in order to facilitate the insertion of the implant and avoid the expulsion of the implant when is already implanted.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lin US Patent 6,080,158 in view of Lin US 6,325,827 B1 in further view of Brantigan US Patent 5,425,772.

Lin as modify by Lin discloses the invention substantially as claimed. However, Lin does not disclose a claw portion extending across the body from one side to the other.

Brantigan discloses an intervertebral implant comprising a plurality of claw portions extending across the body from one side to the other for the purpose of attaching the implant into adjoining vertebrae faces.

It would have been obvious to one having ordinary skill in the art at the time the invention was to modify the interrupted claw portions of the Lin reference with the non-interrupted claw portions of the Brantigan reference in order to attach the implant into adjoining vertebrae faces.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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March 05, 2006.

A. Stewart
ALVIN J. STEWART
PRIMARY EXAMINER